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5                   UNITED STATES DISTRICT COURT  
6                   EASTERN DISTRICT OF WASHINGTON  
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8                   AARON DOYLE,

9                   NO. CV-10-30-EFS

10                  Plaintiff,

11                  ORDER RULING ON PENDING  
12                  MOTIONS

v.

13                  WILLIAM GONZALES; DAN W.  
14                  DOPPS; SCOTT D. JONES; and  
15                  the CITY OF QUINCY,  
16                  WASHINGTON,

17                  Defendants.

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19                  **A. Mora Report**

20                  The Court has been asked to determine the discoverability of the  
21 Mora Report on a number of occasions. Most recently, on December 22,  
22 2011, the Court ruled that Defendant City of Quincy ("City") waived the  
23 attorney-client privilege attached to the Mora Report by showing it to  
24 the subject of the investigation, Chief William Gonzales. ECF No. [554](#).  
25 Accordingly, the Court ordered the City to disclose the report to  
26 Plaintiff Aaron Doyle by January 5, 2012. In lieu of disclosing the  
report, the City and other Defendants (collectively, "Defendants") ask  
the Court to either reconsider its ruling or to stay this lawsuit to  
allow Defendants to seek an interlocutory appeal on the issue of whether  
the Mora Report must be disclosed to Mr. Doyle. ECF Nos. [556](#) & [561](#). Mr.  
Doyle asks the Court to strike Defendants' reconsideration motion because

1 it was filed one day late and exceeds the ten-page limit by one page.  
2 ECF No. [559](#). After reviewing the submitted material and relevant  
3 authority, the Court is fully informed and denies the pending motions.

4 First, under the circumstances, the Court denies Mr. Doyle's request  
5 to strike the reconsideration motion; the Court will consider Defendants'  
6 reconsideration motion.

7 Second, after considering Defendants' arguments in support of  
8 reconsideration, the Court denies reconsideration of its Order requiring  
9 Defendants to produce the Mora Report. Reconsideration is an  
10 "extraordinary remedy, to be used sparingly in the interests of finality  
11 and conservation of judicial resources." *Kona Enters., Inc. v. Estate of*  
12 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). When reviewing a motion for  
13 reconsideration of an interlocutory order, the Court considers the  
14 following factors:

- 15 1) There are material differences in fact or law from those  
16 initially presented to the Court, which could not have been  
previously discovered through reasonable diligence;
- 17 2) There are new material facts that happened *after* the Court's  
decision;
- 18 3) There has been a change in the law *after* the Court's decision;  
or
- 19 4) The movant makes a convincing showing that the Court failed to  
consider previously-presented material facts.

20 See *Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 586  
21 (D. Ariz. 2003) (surveying relevant local rules for districts throughout  
22 the Ninth Circuit). None of these conditions are satisfied here. The  
23 legal arguments presented by Defendants were previously fully considered  
24 by the Court; the Court abides by its decision. Defendants'  
25 reconsideration motion is denied.

1       Third, interlocutory orders may be appealed if the Court is "of the  
2 opinion that such order involves a controlling question of law as to  
3 which there is substantial ground for difference of opinion and that an  
4 immediate appeal from the order may materially advance the ultimate  
5 termination of the litigation." 28 U.S.C. § 1292(b). The questions of  
6 whether the Mora Report is protected by the attorney-client privilege  
7 and, if so, whether that privilege was waived, are questions of law. The  
8 Court concludes there are not substantial grounds for difference of  
9 opinion on these questions of law. Therefore, there is no basis for an  
10 interlocutory appeal, and the Court will not stay production of the Mora  
11 Report. Accordingly, Defendants' interlocutory-appeal request and  
12 related stay request are denied.

13       For the above given reasons, the Court denies Defendants' Motion for  
14 Reconsideration of Order, or Alternatively to Authorize Appeal and Stay  
15 Enforcement of Order, ECF No. [556](#), and Motion to Authorize Appeal and  
16 Stay Enforcement [of] Order, ECF No. [561](#).

17 **B. Documents Currently Filed Under Seal**

18       On December 21, 2011, the Court ordered Defendants to file a motion  
19 to seal certain previously-filed-under seal documents so that the Court  
20 could determine whether sealing of such documents is necessary. ECF No.  
21 [21](#). Rather than file a motion, Defendants filed a response to the  
22 Court's Order, explaining that they did not believe the documents need  
23 to be sealed but rather filed them under seal as a matter of caution  
24 given the concern previously articulated by Mr. Doyle, and as recognized  
25 by the Court, that Mr. Doyle's Sierra County personnel records are  
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1 protected documents. ECF No. [565](#). Mr. Doyle asks the Court to strike  
2 Defendants' response as not being compliant with the Court's Order.

3 Given Defendants' position relating to these documents, the Court  
4 construes Defendants' Response, ECF No. [565](#), as a Motion to Unseal ECF  
5 Nos. 507, 508, 509, 510, and 511. Mr. Doyle's response to this construed  
6 motion must be filed in accordance with Local Rule 7.1, based on the date  
7 of this Order.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Defendants' Motion for Reconsideration of Order, or  
10 Alternatively to Authorize Appeal and Stay Enforcement of Order, **ECF No.**  
11 [556](#), is **DENIED**.

12 2. Mr. Doyle's Motion to Strike, **ECF No.** [559](#), is **DENIED**.

13 3. Defendants' Motion to Authorize Appeal and Stay Enforcement  
14 [of] Order, **ECF No.** [561](#), is **DENIED**.

15 4. Mr. Doyle's Motion to Strike Defendants' Memorandum in Response  
16 to Order Requiring Defendants to File Motion to Seal, **ECF No.** [566](#), is  
17 **DENIED**.

18 5. Defendants' Memorandum in Response to Order Requiring  
19 Defendants to File a Motion to Seal, **ECF No.** [565](#), is **CONSTRUED** as a  
20 Motion to Unseal ECF Nos. 507, 508, 509, 510, and 511.

21 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
22 this Order and to provide copies to counsel.

23 **DATED** this 5<sup>th</sup> day of March 2012.

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S/ Edward F. Shea

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EDWARD F. SHEA

United States District Judge

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